Bail slip

The Appellant/Accused Viz., Bhaskar, was directed to be released on bail by the order of this Court dated 13.12.2000 and made in Crl M P 8618/2000 in Crl.A No.555/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-8-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.555 of 2000

Bhaskar .. Appellant/Accused

vs

State represented by
Inspector of police
Mappedu Police Station
Tiruvallur District
(Cr.No.387/95) .. Respondent/Complainant

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment of the Principal Sessions Judge, Chingleput, made in S.C.No.49/99 dated 19.6.2000.

For Appellant : Mr.S.Shanmugavelayutham
For Respondent : Mr.M.K.Subramaniam
Government Advocate
(Criminal Side)

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, where he stood accused of committing murder of his three children, found guilty under Sec.302 of I.P.C. (3 counts) and awarded life sentence, which shall run concurrently, by the Court of Principal Sessions Division, Chengalpattu, has brought forth this appeal challenging the judgment.

2. The short facts necessary for the disposal of this appeal could be stated thus:

(a) The appellant/accused was living with his wife and three children along with his parents in Sunguvarchatram. He wanted to take a separate residence, since the house was crowded, to which course his wife was not amenable. Thereafter, he took a small room which was

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attached to a tea shop, on a monthly rental of Rs.300/-. His wife suspected that he had got any illicit intimacy with somebody in view of his taking a separate residence. On 9.10.1995, there was a quarrel between the spouses as usual. Pursuant thereto, he took a decision to commit suicide and to kill all the three children. According to his plan, at about 7.10 P.M., he took all the three children namely Brundha, Harinath and Swetha, in a cycle to Erayamangalam Village, and thereafter, he went to Naicken Kuttai where he took the children inside the pond upto his chest level and immersed them. Then, leaving all of them, he went to Mappedu and tried to get a rope in the shop of P.W.6; but, he could not. At the time when he was returning, P.W.4 the father of the accused, along with his friend P.W.3, were coming in search of the children and questioned him about the children. At that time, the accused was telling them that he killed the children by immersing them in water. Then, all of them went to Naicken Kuttai, took the children out of the pond and brought them to the village. P.W.1, the Village Administrative Officer of that place, on coming to know about the same through his menial P.W.2, at about 10.00 P.M., rushed to the house of the appellant/accused, where he found the dead bodies of all the three children. At that time, the appellant gave a confessional statement, which was recorded by P.W.1. Ex.P1 is the statement given by the accused. Immediately, P.W.1 took Ex.P1 along with his special report Ex.P2, to Mappedu Police Station, where P.W.8 the Sub Inspector of Police, was present, and handed over them to P.W.8. On the strength of Exs.P1 and P2, P.W.8 registered a case in Crime No.387/95 under Sec.302 of I.P.C. at witching hour. Printed First Information Report Ex.P16 was sent to Court.

(b) P.W.9, the Inspector of Police, on receipt of a copy of the First Information Report, took up the case for investigation and proceeded first to the house of the appellant/accused, where he prepared an observation mahazar Ex.P3, in the presence of witnesses and a rough sketch Ex.P17. He examined witnesses and recorded their statements. Then, he conducted inquest over the dead bodies of three children in the presence of panchayatdars and witnesses and prepared Exs.P18, P19 and P20 the inquest reports respectively. He, then, proceeded to Naicken Kuttai the next morning, made an inspection and prepared Ex.P4, the observation mahazar, and Ex.P21, the rough sketch.

(c) Pursuant to the requisition Ex.P8, given by the Investigating Officer, P.W.7, the Civil Assistant Surgeon, attached to the Government Hospital, Thiruvallore, conducted autopsy on the dead bodies of three children. So far as the deceased Harinath is concerned, the postmortem certificate issued by the Doctor, is marked as Ex.P9. Ex.P12 is the postmortem certificate issued by him in respect of the deceased Swetha. The postmortem certificate issued by the Doctor in respect of the deceased Brindia, is marked as Ex.P14. The viscera were sent to Forensic Sciences Department for chemical analysis. Accordingly, they were subjected to chemical analysis, and the viscera reports in respect of the three children were received, which were marked as Exs.P10, P11 and P13 respectively. Thereafter, the Doctor has given his final opinion that all the three children would appear to have died of drowning.

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(d) During investigation, the Investigating Officer arrested the accused at about 2.30 P.M. and produced him before the Court for remand. P.W.10, the Inspector of Police, took up further investigation and on completion of investigation, filed the final report against the appellant/accused.

3. The case was committed to Court of Session, and necessary charge was framed against the accused.

4. In order to substantiate the charge levelled against the accused, the prosecution examined 10 witnesses and relied on 21 exhibits. No material objects were marked. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. He denied them as false. No defence witnesses were examined. After hearing the arguments advanced by both sides, the trial Judge found the appellant/accused guilty as per the charge under Sec.302 of I.P.C. (3 counts) and awarded the life imprisonment which shall run concurrently. Hence, this appeal at the instance of the appellant/accused.

5. The learned Counsel appearing for the appellant Mr.S.Shanmugavelayutham, would submit that in the instant case, the prosecution had no direct evidence to offer; that all the witnesses who were examined in respect of the motive part and all other aspects, have turned hostile; that the menial who was examined as P.W.2, and who according to the prosecution, informed to P.W.1 the Village Administrative Officer (V.A.0), has also turned hostile, and thus, the only evidence what was available for the prosecution was that of P.W.1; that according to the prosecution, P.W.1 went to the house of the appellant/accused, where the accused gave a confessional statement marked as Ex.P1; that the evidence of P.W.1 and Ex.P1 the statement, alleged to have been given by the appellant/accused, do not inspire any confidence at all, and they are shrouded with suspicious circumstances; that in the instant case, according to P.W.1, the V.A.O., he is hailing from a nearby place, where he is having residence, and he used to come to the Office by 9.00 A.M. and return to his native by 4.30 P.M., and on the date of occurrence, it was P.W.2, who came to his office at about 11.00 P.M. and informed him, which is highly impossible; that apart from that, it was P.W.2, the menial, who took P.W.1 to the house of the appellant/accused; but, P.W.2 has turned hostile; that according to P.W.1, he took the accused immediately along with Exs.P1 and P2 to the Police Station and produced him before the Police Officials; but, as per the evidence of the Investigating Officer, the accused was arrested by him the next day at 2.30 P.M.; that this inconsistency would go to the root of the matter, and under the circumstances, such a confessional statement could not have been recorded at all.

6. Added further, the learned Counsel that the F.I.R. should have come into existence the next morning only and not by way of Ex.P1 statement, as put forth by the prosecution through the evidence of P.W.1, the V.A.O.; that when the Investigating Officer made inspection

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of the first place namely the house of the appellant where the dead bodies of three children were found, at witching hours, there was no necessity for him to go to the pond where the three children were immersed, the next morning at about 11.30 A.M.; that this would indicate that the F.I.R. should have come into existence in the morning hours only and not at the time as put forth by the prosecution; that these circumstances would clearly indicate that Ex.P1 could not have come into existence as alleged by the prosecution; that in the absence of such evidence, the prosecution had no evidence at all to offer; that the lower Court should have rejected the prosecution case disbelieving the evidence of P.W.1 and Ex.P1 also, and hence, the appellant/accused is entitled for an acquittal.

7. In support of his contentions, the learned Counsel for the appellant relied on two decisions namely (1) 1976 L.W. (CRL.) 28 (MOHAMMAD IBRAHIM V. B.RAMA RAO) and (2) 1997 SUPREME COURT CASES (CRI) 358 (JASPAL SINGH V. STATE OF PUNJAB).

8. The Court heard the learned Government Advocate (Criminal Side) on the above contentions.

9. The Court paid its anxious consideration on the rival submissions made, and had a thorough scrutiny of the materials available.

10. It is not in controversy that the three children of the appelant/accused namely Brundha, Harinath and Swetha, died out of drowning. In order to substantiate the same, the prosecution examined P.W.7 the Doctor, who conducted autopsy and who issued the postmortem certificates Exs.P9, P12 and P14 in respect of the three children respectively, from which it would be clear that all the children died out of drowning. In the instant case, it is not the case of the appellant/accused either before the Court below or before this Court that they died otherwise or due to any other cause. Thus, it could be safely concluded that all the three children died on account of drowning.

11. The specific case of the prosecution was that the appellant/accused took all the three children on the date of occurrence namely 9.10.1995, from his village to a nearby place called Naicken Kuttai, where he took them inside the pond and immersed them also, due to which they died. It is true that in the instant case, the witnesses examined by the prosecution, namely P.W.3, the friend of the accused, and P.W.4, the father of the accused, to speak about the circumstances, have turned hostile, and thus, their evidence did not support the prosecution case. However, the prosecution put forth evidence through P.W.1, the Village Administrative Officer, and the lower Court has also thoroughly relied on his evidence and Ex.P1, the statement. According to P.W.1, on the night of 9.10.1995, he was in his office, and at about 11.00 P.M., he was informed by P.W.2, his menial, that all the three children were found drowning, and it was due to the act done by the appellant/accused, and that their dead bodies were in the house of the accused. Immediately, P.W.1 rushed to the house of the accused and found the dead bodies of three children,

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and the accused, his father, P.W.4, and his friend, P.W.3, also accompanied P.W.1. At that time, the appellant/accused gave a confessional statement, and the same was recorded by P.W.1. It is pertinent to point out that the said statement was also signed by the appellant along with his parents. The said statement was marked as Ex.P1. Ex.P1 was also produced before the Police Officials along with the special report Ex.P2, by P.W.1, which led to the registration of a case by P.W.8, the Sub Inspector of Police, at 12.00 A.M. It remains to be stated that the case has been registered within a short while from the time when Ex.P1 came into existence, and to put it correctly, it was within 30 minutes. P.W.8 has also been examined to speak about the fact that the case was registered at witching hour namely 12.00 A.M., which would be pointing to the circumstances when Ex.P1 came into existence.

12. In the instant case, the Court is unable to notice any reason or circumstance to disbelieve or cast a doubt on the evidence of P.W.1. P.W.1 is the Village Administrative Officer (V.A.O.). His evidence has inspired the confidence of the Court. Now, the learned Counsel for the appellant contended that it is the usual practice of P.W.1 to go over to his Office by 9.00 A.M. and to come back to his residence by 4.30 P.M. every day; but, on the fateful day, he was staying over in his Office. At this juncture, it is pertinent to point out that no suggestion was put to him under what circumstance he happened to stay in his Office that night. This Court is of the opinion that the reason why he stayed over in his Office that night cannot be a ground to disbelieve his evidence for the simple reason that the case was registered by the police at about 12.00 A.M., within half an hour from the time when Ex.P1 came into existence. That apart, Ex.P1 bore the signature of the appellant/accused. The only explanation, which the accused came forward to offer, was that his signature was obtained in a white paper, and subsequently, it has been filled up. Such an explanation cannot be accepted in view of the circumstances available.

13. The next contention that the First Information Report (F.I.R.) has come into existence in the morning hours of the next day, in view of the inspection of the scene of occurrence namely Naicken Kuttai, by the Investigating Officer at about 11.30 A.M. in the presence of the witnesses, cannot be countenanced for the simple reason that the F.I.R. has reached the Court at about 10.30 A.M. This, therefore, would be a strong circumstance to show that the F.I.R. has come into existence in the way as put forth by the prosecution. In the instant case, it was P.W.1, the V.A.O., who along with Ex.P2, his special report, has placed Ex.P1, the statement, given by the accused, before the Police Officials, which was urging for the whole case. So long as the evidence of P.W.1 inspires the confidence of the Court, the Court could well accept his evidence. It remains to be stated that both the decisions relied on by the learned Counsel for the appellant are not applicable to the present facts of the case. In both the cases, it was the accused, who met the Village Administrative Officer of his place and had made the statement. Apart from that, in those cases, there are number of circumstances pointing to the doubtful nature of such an extra-judicial confession. But, in the

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instant case, it was P.W.1, the V.A.O., who went to the house of the accused, where the dead bodies of all the three children were found, and where the accused happened to be available. At that time, he gave a statement, and the same was recorded by P.W.1, which is Ex.P1. The said statement is also placed before the lower Court. Under the circumstances, the lower Court was perfectly correct in accepting the evidence of P.W.1, as it inspired the confidence of the Court, and thus, the trial Court found the appellant/accused guilty and awarded the life imprisonment as required in law. This Court is unable to notice any reason to interfere either in the conviction based or in the sentence awarded by the trial Court.

14. In the result, this criminal appeal fails, and the same is dismissed. It is reported that the appellant is on bail. Hence, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1)The Principal Sessions Judge, Chengalpattu.
2)The Judicial Magistrate No.II, Tiruvallore.

3)The Judicial Magistrate No.II, Tiruvallore,
Through The Chief Judicial Magistrate, Chengalpattu.
4)The Superintendent, Central Prison, Vellore.
5)The District Collector, Tiruvallore District.
6)The District Collector, Chengalpet.
7)The Director General of Police, Mylapore, Chennai 4.
8)The Public Prosecutor, High Court, Madras.
9)The Inspector of Police, Mappedu Police Station, Tiruvallore District.
10)The Station House Officer, Vellore Town Police Station, Vellore.

+1cc to Mr.S.Shunmugavelayutham, Advocate Sr 34782

nsv/
NG (CO)
km/23.8.

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